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Via CM/ECF

June 7, 2022

Mark Langer
Clerk of the Court
U.S. Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue NW
Washington, D.C. 20001

Re: *Al-Hela v. Biden***No. 19-5079****En Banc Oral Argument Held September 30, 2021**

Dear Mr. Langer:

This letter responds to the Government’s letter of May 27, 2022, concerning the use of ex parte materials in the district court. In its letter, the Government states that no ex parte “exhibits” were introduced “at the merits hearing” in this case. That statement, while technically correct, could be misleading if not understood in context.

As the Government’s letter acknowledges, the Government provided the district court with “source-related ex parte materials to make determinations about the credibility of certain sources,” and the district court relied on those materials to inform its decision on the merits. Gov’t Letter at 2-3, May 27, 2022. Indeed, the district court examined and relied upon unredacted, ex parte versions of redacted documents filed as exhibits. JA 141. As described by the Government, it certainly provided ex parte materials in connection with the merits hearing, whether or not one views the ex parte production as happening “at” the merits hearing or whether the materials were formally designated as “exhibits”—distinctions on which nothing appears to turn.

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To the extent the Government's letter implies that providing some (but not all) of the ex parte materials to Petitioner's counsel in redacted or summary form was harmless, we respectfully disagree. Petitioner's ability to present his case and respond to the government's allegations was significantly impeded by the use of ex parte materials. *See* Pet'r's Br. at 52-54; Pet'r's Reply Br. at 18-21.

We respectfully request that you distribute this letter to the Members of the en banc Court.

Respectfully submitted,

/s/ S. William Livingston, Jr.
S. William Livingston, Jr.

cc: Counsel of Record (via CM/ECF)